IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
Central Division

SMITHFIELD FOODS, INC., MURPHY FARMS, LLC, and PRESTAGE-STOECKER FARMS, INC.,	)	
Plaintiffs,	)	
v.	)	**Civil Action No. 4:02-CV-90324**
THOMAS J. MILLER, Attorney General of the State of Iowa in his Official Capacity,	)	
Defendant.	)	

CONSENT DECREE

This Consent Decree is entered into this ___ day of September, 2005, by and between the State of Iowa, by and through the Attorney General of Iowa ("Attorney General"), and Smithfield Foods, Inc. ("Smithfield"), Murphy Farms, LLC, and Prestage-Stoecker Farms, Inc. and their successors and assigns (collectively "the Smithfield Producers").

Whereas, on January 22, 2003, the United States District Court for the Southern District of Iowa in this case permanently enjoined the Attorney General from enforcing Iowa Code § 9H.2;

Whereas, Iowa Code § 9H.2 was amended in 2003 on appeal of the district court's ruling, and re-codified at Iowa Code § 202B.201;

Whereas, the United States Court of Appeals for the Eighth Circuit vacated and remanded this case for further proceedings in light of this 2003 amendment; and

Whereas, the Parties, desiring to avoid the uncertainty, delay, and expense of further litigation, have entered into good faith settlement negotiations in an effort to resolve disputed claims without any admission of wrongdoing by any Party;

Now, therefore, in consideration of the promises made here, and other good and valuable consideration, the Parties agree as follows:

1. Permanent Injunction: The State of Iowa consents to a permanent injunction enjoining enforcement of Iowa Code § 202B.201 as it has existed in the past, as it

now exists, or as it may be amended against Smithfield Foods, Inc., Murphy Farms, LLC, Prestage-Stoecker Farms, Inc. and all present or future entities which by reason of their relationship with Smithfield Foods, Inc. or any of its other affiliates would be deemed a "Processor" by operation of Iowa Code § 202B.102(10)(a)-(b), or any of their officers, directors, agents and employees, (the Smithfield Parties); provided, however, that this Consent Decree will be in effect for ten (10) years after which the rights of the Parties will be as they stood prior to the entry of this Consent Decree. The doctrine of laches and all statutes of limitations will be tolled for the duration of this Consent Decree.

2. Grower Associations: Smithfield and the Smithfield Producers recognize the right of contract growers to join an association of growers, and will not impose terms and conditions on contracts less favorable to those contract growers on the basis of such membership, or activities in such association or associations.

3. Definitions: The Parties agree that insofar as this Consent Decree is concerned, the following definitions apply:

A. "Contract inputs" means a commodity, an organic or synthetic substance, or compound that is used to produce a commodity, including, but not limited to, any of the following:

(a) Livestock or plants.

(b) Agricultural seeds.

(c) Semen or eggs for breeding livestock.

(d) A fertilizer or pesticide.

(e) Veterinary services or vaccines.

B. "Contract Grower rights" include the following:

(a) *Right to Join Association*. The right of a contract grower to join, or to refrain from joining or belonging to, an association of growers.

(b) *Right to be a Whistleblower*. The right of a contract grower to lawfully provide statements or information (including to the United States Secretary of Agriculture or to a law enforcement agency) regarding alleged improper actions or violations of law by a contractor or processor. This right does not include the right to make statements or provide information if such statements or information are determined to be libelous or slanderous.

(c) *Right to Use Contract Growers Lien.* The right of a contract grower to file, continue, terminate, or enforce a lien under Iowa Code, Chapters 579A and 579B.

(d) *Right to Review Production Contracts.* The right of a contract grower to utilize protections to review production contracts granted under Iowa Code § 202.3.

(e) *Right to Disclose Contractual Terms.* The right of a contract grower to disclose contractual terms under Iowa Code § 202.3.

(f) *Right to Penalties and Enforcement.* In addition to any other rights and remedies which may be available, a contract grower who suffers damages may obtain appropriate legal and equitable relief, including punitive damages, in a suit at common law, as fully described in 2004 Senate File 502. That relief may include, but is not limited to: In such a civil action, the contract grower who prevails is entitled to treble damages, court costs, attorneys' fees, and litigation expenses. In order to obtain injunctive relief, the contract grower is not required to post a bond, prove the absence of an adequate remedy at law, or prove the existence of special circumstances, unless for good cause the court otherwise orders. If Smithfield or the Smithfield Producers cancel or terminate a contract other than according to its terms and this Consent Decree, the contract grower may recover damages including, but not limited to, the remaining value of the contract and the value of the remaining useful life of capital investments made to fulfill the contract, including land, structures, machinery, or equipment to the extent that capital investments exceed the fair market value of the land, structures, machinery, or equipment. The Attorney General may enforce any of the rights of the contract growers as identified here against Smithfield or the Smithfield Producers or an employee or agent who impedes such rights. In addition to the rights and remedies here described, the court may award a civil penalty against the Smithfield Producers for violation of a contract grower's rights as identified in law, or this Consent Decree, in an amount up to $5,000 per day per violation.

4. Company Activities: Smithfield and the Smithfield Producers agree that they will not engage, or permit any employee or agent to engage, in the following in connection with contract growers' contracts:

A. Taking actions to coerce, intimidate, retaliate against, or discriminate against any contract grower because the contract grower exercises, or attempts to exercise, any contract grower's right, including actions affecting the following:

(a) The execution, termination, extension, or renewal of an agricultural contract.

(b) The treatment of a contract grower, which may include providing discriminatory or preferential terms in an agricultural contract, or interpreting terms of an existing agricultural contract in a discriminatory or preferential manner. The terms may relate to the price paid for a commodity, the quality or the quantity of a commodity demanded, or financing, including investment requirements.

(c) The imposition of a penalty, including the unreasonable denial of a reward. The penalty may be in any form, including, but not limited to, financial penalties. Financial penalties may relate to loans, bonuses, or inducements.

(d) Alter the quality, quantity, or delivery times of contract inputs provided to the contract grower; however, delivery times may be changed by mutual agreement due to weather and market conditions.

(e) Use the performance of any other contract grower as the basis of the termination, cancellation, or renewal of a production contract, or to negatively affect the contract grower's compensation; provided, however, that nothing in this Paragraph 4 shall prohibit Smithfield or the Smithfield Producers from using a program similar to its current program, which rewards contract growers with monetary bonuses based on superior performances.

(f) Remedies. Smithfield and the Smithfield Producers agree that should any Iowa contract grower suffer damages as a result of their breach of their contract with the Iowa contract grower or as a result of their failure to abide by any of the other provisions of this Order, the Iowa contract grower, as a third party beneficiary of this Order, can bring a civil action for damages, including treble and punitive damages. In addition, if the Iowa contract grower prevails in the above-referenced civil action, the Smithfield Producers will be responsible for the contract grower's costs and attorney fees in addition to any awarded damages.

B. Providing false information to the contract growers, which may include false information relating to any of the following:

(a) A contract grower with whom the contract grower associates, or an association of contract growers, or an agricultural organization with which the contract grower is affiliated, including, but not limited to, any of the following:

(1) The character of the contract growers.

(2) The condition of the finances or the management of the association of contract growers or agricultural organization.

(b) Contract Grower rights provided by law.

C. Refusing to provide to a contract grower upon request the statistical information and data used to determine compensation paid to the contract grower under the agricultural contract.

D. Refusing to allow a contract grower or a contract grower's designated representative, where it is within each of Smithfield's and the Smithfield Producers' authority, to observe, by actual observation at the time of weighing, the weights and measures used to determine the contract grower's compensation under a production contract. The Parties acknowledge that Smithfield and the Smithfield Producers may have no authority to permit observations referred to in this paragraph on the properties of others.

E. Requiring a contract grower to make capital investments associated with a production contract that are in addition to the investment requirements of such production contract unless fair and equitable compensation is paid to the contract grower, in a manner the contract grower agrees to in writing. In the event of statutory or regulatory mandated improvements or modifications, Smithfield and the Smithfield Producers can require contract growers to make necessary capital improvements to meet such statutory or regulatory standards as a condition to continuing their contractual relationship. If the contract growers cannot reasonably afford such improvements and modifications, the Smithfield Producers will endeavor to reach mutually agreeable financing, enhanced compensation, or other contract modifications with the contract growers for such mandated improvements or modifications. If the contract growers cannot reasonably afford such improvements or modifications, and no mutual agreement is reached with the Smithfield Producers regarding financing, compensation, or other contract modifications, such an event may constitute a *force majeure* under the production contract.

F. To the extent that contract growers organize or adopt a collective bargaining unit, none of Smithfield and the Smithfield Producers will retaliate or take action against such growers because they have determined to organize such a unit. Smithfield and the Smithfield Producers agree to negotiate in good faith with any such unit. Smithfield will refrain from any antitrust or restraint-of-trade litigation against such growers, and Smithfield agrees to negotiate in good faith with any such producer organization.

5. Environmental Program:

A. Smithfield agrees that it will sponsor and pay $100,000 per year for 10 years to support a program at Iowa State University School of Agriculture that will support the swine industry in Iowa. This program will utilize extension services to provide individuals contracting with Smithfield or the Smithfield Producers for the care and feeding of swine an educational program teaching best practices, including best environmental practices. Smithfield and the Smithfield Producers will also provide a reasonable number of professional personnel to complement Iowa State's resources. Smithfield will further ask Iowa State to implement the program, so that contract growers successfully completing its requirements will receive a certificate of completion, and agrees to work with Iowa officials to identify and seek funding from the United States Department of Agriculture, the United States Environmental Protection Agency, or other federal agencies to assist Iowa contract growers to implement these best practices.

B. Smithfield agrees to pay $100,000 per year for 10 years to fund a program for the awarding of annual grants to Iowa citizens or entities that demonstrate both a need for funding and an innovative program to advance swine production in the State. The grants will be awarded to applicants selected by the office of the Attorney General in collaboration with Smithfield and at least two Republican legislators and two Democratic legislators or their designees. The first grants will be awarded following the establishment of protocol to attract applications and select grantees no later than December 31, 2005.

6. Smithfield-Luter Scholarship Fund at Iowa State University: Smithfield agrees that it will continue to fund undergraduate scholarships at Iowa State University for children and grandchildren of Smithfield employees at the current level of $60,000 per year for four years. These scholarships will continue to be awarded to students demonstrating financial need, and a preference will continue to be given to applicants with a demonstrated interest in environmental preservation and animal husbandry.

7. Iowa Plants: Smithfield has informed the Attorney General that it currently intends to keep its Iowa plants, and its plant in Sioux Falls, South Dakota, in operation. Should Smithfield's intentions change, Smithfield will provide 90 days' notice of any plant closure to the Attorney General.

8. Market Access: Smithfield has agreed that for two years following the execution of this agreement 25% of the swine collectively slaughtered at its Iowa facilities and in its plant in Sioux Falls, South Dakota (determined on a rolling 30 day basis) will be purchased on the open market from sellers, other than the Smithfield Producers and Smithfield affiliates.

9. Continuing Jurisdiction: This litigation will be terminated and placed within the closed matters in the files of the district court. However, the district court will retain jurisdiction over this matter to enforce this Consent Decree, as may be necessary.

10. General Release: For, and in consideration of, the actions and promises contained in this Consent Decree, the adequacy and sufficiency of which consideration is hereby acknowledged, the State of Iowa, by and through its Attorney General, hereby releases, remises, acquits, and forever discharges the Smithfield Parties who are or might be liable in any way, from and against any and all liability or responsibility whatsoever of any and every kind and nature for any and all damages or losses or other claims, including injunctive or declaratory relief, or fines or penalties, based upon any and all present or future claims, demands, or causes of action, including, but not limited to, causes of action sounding in tort, resulting or to result from, or on account of, or arising out of any alleged violation of Iowa Code § 202B.201 as it stands at the time of the entry of this Consent Decree, or as it stood at any time prior to the most recent amendment thereof through the period covered by this Consent Decree. It is further agreed and understood that said consideration is given and accepted in compromise of disputed claims, and that nothing contained herein is, or is to be construed as an admission of liability on the part of, the Smithfield Parties, all such liability being expressly denied by them.

11. Smithfield and the Smithfield Producers will not require contract growers to use alternative dispute resolution as a mechanism to resolve any disputes related to, or arising from, this Consent Decree and its terms.

12. Smithfield and the Smithfield Producers will not raise pigs for slaughter in Iowa on company-owned farms, during the first five years after the date of this Consent Decree except Smithfield and the Smithfield Producers may raise hogs for slaughter on company owned farms during such period to the extent necessary to replace their current hog production capacity in Iowa from their existing contract growers who, after the date of this Consent Decree, either terminate their contracts for any reason or fail to renew or extend their contracts when offered the same or economically more beneficial terms.

ENTER: September 16, 2005

Robert W. Pratt

ROBERT W. PRATT
U.S. District Judge

WE ASK FOR THIS:

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